Calendar No. 501

100th Congress *1st Session*	SENATE	REPORT 100-264

ESTABLISHMENT OF A MOTOR CARRIER ADMINISTRATION IN THE DEPARTMENT OF TRANSPORTATION

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 747

DECEMBER 17 (legislative day, DECEMBER 15), 1987.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
19-010 WASHINGTON : 1987

S263-30

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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Calendar No. 501

100TH CONGRESS
1st Session

SENATE

REPORT
100-264

ESTABLISHMENT OF A MOTOR CARRIER ADMINISTRATION IN THE DEPARTMENT OF TRANSPORTATION

DECEMBER 17 (legislative day, DECEMBER 15), 1987.—Ordered to be printed

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 747]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 747) to establish a motor carrier administration in the Department of Transportation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The bill, S. 747, as reported, would require that an administration be created within the Department of Transportation (DOT) to coordinate motor carrier functions, similar to the modal administrations which currently exist for other modes of transportation.

BACKGROUND AND NEEDS

With the passage of the Department of Transportation Act of 1966, it was the intent of Congress that each mode of transportation be represented in the new Department. Accordingly, the legislation as reported provided for five operating administrations organized largely along modal lines.

Currently, there are nine operating administrations within DOT. One of these, the Federal Highway Administration (FHWA), which has primary responsibility for highway construction, also has jurisdiction over truck and bus safety concerns. In March 1985, the FHWA established the Associate Administrator position for motor carriers. Prior to that time, the FHWA's motor carrier functions

were limited to direct Federal activities, with the Bureau of Motor Carrier Safety staff inspecting vehicles and issuing regulations.

This Associate Administrator is the head of an Office of Motor Carriers, which serves as the focal point in DOT for motor carrier transportation matters. However, the associate administrator status has precluded DOT attention to issues affecting the motor carrier industry at the same high level as that accorded the railroads, as represented by the Federal Railroad Administration; the airlines, as represented by the Federal Aviation Administration; and the shipping industry, as represented by the Maritime Administration.

Industry and safety groups continue to assert that there is a lack of priority and centralized emphasis in the handling of motor carrier policy issues within DOT. By creating a Motor Carrier Administration (MCA), this reported bill seeks to increase the focus on effective motor carrier safety, enforcement, research, and programs related to the motor carrier industry.

Legislative History

Senator Hollings, the Chairman of the Committee, introduced S. 747 on March 13, 1987. The bill is cosponsored by Senators Breaux, Inouye, Ford, Riegle, Exon, Gore, Rockefeller, Pressler, Kasten, Trible, Nunn, Pryor, Bumpers, Helfin, Bingaman, DeConcini, Sasser, Nickles, D'Amato, Reid, Shelby, Melcher, Byrd, Kassebaum, Chiles, and Lautenberg. In the 99th Congress, Senator Hollings and Senator Breaux, then a member of the House of Representatives, introduced similar legislation which was not acted upon prior to adjournment.

On July 15, 1987, the Surface Transportation Subcommittee held a hearing on S. 747. The witnesses at this hearing included representatives of DOT, FHWA, the National Highway Traffic Safety Administration (NHTSA), the American Trucking Associations, the Owner-Operators Independent Drivers Association of America, the American Bus Association, the United Bus Owners Association, the Teamsters, and several highway safety and insurance organizations.

A similar bill, H.R. 3569, was introduced in the House of Representatives on October 28, 1987.

The Committee met in open executive session on November 19, 1987, and without objection, ordered S. 747 reported with an amendment clarifying that DOT is to consult with all the Commissioners of the Interstate Commerce Commission (ICC) in reporting under section 3 of the reported bill on functions to be performed by the MCA.

Summary of Major Provisions

As reported, S. 747 has two major provisions:

(1) It would change the current organizational responsibility at DOT by elevating operational responsibility for motor carrier safety and programs from a component within FHWA to a separate administration. An Administrator, appointed by the President, with the advice and consent of the Senate, would head the MCA and report directly to the Secretary of Transportation (Secretary).

A Deputy Administrator would be appointed by the Secretary, with approval of the President. The Administrator would be responsible for carrying out motor carrier safety duties as vested in the Secretary by chapters 5 and 31 of title 49, U.S. Code, as well as other functions, while motor vehicle safety standards applicable to the manufacture of trucks and buses would still be set by NHTSA.

(2) The Secretary, in consultation with the members of the ICC, within 6 months after enactment of this legislation, would assess and report to Congress on ICC activities related to motor carrier transportation to determine whether the MCA could more efficiently perform any of those functions.

Estimated Costs

U.S. Congress,
Congressional Budget Office,
Washington, DC, December 4, 1987.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared a revised cost estimate for S. 747, a bill to establish a motor carrier administration in the Department of Transportation, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, November 19, 1987. CBO expects that enactment of this bill would result in costs to the federal government of approximately $14 million over the next five years, and would not affect the budgets of state or local governments. This estimate assumes enactment of S. 747 in 1988 and start-up of the new administration in fiscal year 1989.

S. 747 would create a new Motor Carrier Administration within the Department of Transportation (DOT), while removing jurisdiction for motor carrier safety activities from the Federal Highway Administration. The National Highway Traffic Safety Administration would retain responsibility for safety standards applicable to the manufacture of trucks and buses.

Based on information provided by DOT and the General Accounting Office, CBO estimates that this reorganization would involve one-time costs of about $500,000 and recurring costs of $3 million to $4 million annually beginning in fiscal year 1989. This estimate of costs includes salaries, benefits and increased overhead for approximately 30 new positions required to staff the new Motor Carrier Administration. These new positions would be in addition to existing ones that would be transferred from the Federal Highway Administration. S. 747 authorizes no additional funds for this new administration.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Edward M. Gramlich,
Acting Director.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

NUMBER OF PERSONS COVERED

This legislation provides for the creation of a Motor Carrier Administration within DOT. DOT currently administers truck and bus related functions through an Office of Motor Carriers within the FHWA. The reported bill would transfer to the new administration the functions currently handled by this office, as well as other Federal Government activities that affect transportation by motor carriers. It is not envisioned that the number of persons affected by the new administration would be any different than those now covered by existing DOT regulations.

ECONOMIC IMPACT

The economic impact of the legislation will be primarily on DOT. Under the reported bill's provision mandating the creation of the MCA, DOT will incur some additional costs associated with executive direction and administrative functions that are currently provided by FHWA. These costs will be somewhat offset by the transfer of personnel from FHWA to the MCA. The bill envisions that the MCA will provide comprehensive research, planning, and programming relative to motor carrier policy and safety.

DOT and the ICC also could incur some minimal research costs to comply with the bill's requirement that ICC activities be reviewed to determine which could be more efficiently performed by the MCA. The bill requires no new regulation of individuals, consumers, or businesses, and thus is expected to have no economic impact on them.

PRIVACY

The bill will have no adverse impact on the personal privacy of the individuals affected.

PAPERWORK

With respect to paperwork requirements, the Committee does not foresee an increase in the current level as a result of this legislation.

Section-by-Section Analysis

SECTION 1.--FINDINGS

This section reflects the intent of Congress regarding the need to establish a Motor Carrier Administration. At present, there are separate administrations within DOT responsible for ensuring the safe operation and coordination of activities for each mode of transportation except motor carrier.

SECTION 2.—MOTOR CARRIER ADMINISTRATION

This section would amend section 104 of title 49, United States Code, by removing the jurisdiction of motor carrier safety and other functions from the FHWA and adding a new section which would provide a Motor Carrier Administration in DOT to be responsible for these activities. The MCA would be headed by an Administrator appointed by the President and approved by the Senate. The Administrator would report to the Secretary. The Secretary would appoint a Deputy Administrator, with the President's approval, who would report to the Administrator. The Administrator would be responsible for duties related to motor carrier safety and other functions as prescribed by the Secretary, except the promulgation of motor vehicle safety standards applicable to the manufacture of trucks and buses, which will remain a responsibility of NHTSA.

SECTION 3.—INTERSTATE COMMERCE COMMISSION MOTOR CARRIER ACTIVITIES REPORT

This section calls upon the Secretary in consultation with the members of the Interstate Commerce Commission, to review and report to Congress within 6 months after enactment of this legislation on any activities of the ICC in the motor carrier area which would be more efficiently performed by the new MCA. The study and report would assess any duplicative functions that might exist between DOT and the ICC and any activities currently performed by the ICC which would be more efficiently performed through a transfer of responsibility and implementation by DOT. Particular attention should be given to safety issues since the level of public attention to motor carrier safety serves as one of the principal motivating forces behind the creation of the MCA. The requested report is to include recommendations for legislative action that might be deemed appropriate to carry out the conclusions of the report with legislative action as a precondition to any actual transfer of authority.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

SECTION 5314 OF THAT TITLE

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, and
Under Secretary of Commerce for Travel and Tourism.

* * * * * * *

Executive Director, Federal Retirement Thrift Investment Board.
Deputy Under Secretary of Defense for Acquisition.
Administrator, Motor Carrier Administration, Department of Transportation.

SECTION 5316 OF THAT TITLE

§ 5314. Positions to level III

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:
Administrator, Agricultural Marketing Service, Department of Agriculture.
Administrator, Agricultural Research Service, Department of Agriculture.

* * * * * * *

Associate Deputy Secretary, Department of Transportation.
Chief Scientist, National Oceanic and Atmospheric Administration.
Deputy Administrator, Motor Carrier Administration, Department of Transportation.

TITLE 49, UNITED STATES CODE

CHAPTER 1 OF SUBTITLE I OF THAT TITLE

Section 101. Purpose

* * * * * * *

110. St. Lawrence Seaway Development Corporation
111. Motor Carrier Administrator.

§ 101 through § 103 * * *

§ 104. Federal Highway Administration

(a) The Federal Highway Administration is an administration in the Department of Transportation.
(b)(1) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.
(2) The Administration has a Deputy Federal Highway Administrator who is appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.
(3) The Administration has an Assistant Federal Highway Administrator appointed in the competitive service by the Secretary, with the approval of the President. The Assistant Administrator is

the chief engineer of the Administration. The Assistant Administrator shall carry out duties and powers prescribed by the Administrator.

(c) The Administrator shall carry out—

(1) duties and powers vested in the Secretary by chapter 4 of title 23 for highway safety programs, research, and development related to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety; *and*

[(2) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 31 of this title; and]

[3] *(2)* additional duties and powers prescribed by the Secretary.

[(d) A duty or power specified by subsection (c)(2) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.]

§ 105 through § 110 * * *

§ 111. Motor Carrier Administration

(a) The Motor Carrier Administration is an administration in the Department of Transportation.

(b)(1) The head of the Administration is an Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

(2) The Administration has a Deputy Administrator who is appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(c) The Administrator shall carry out—

(1) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 31 of this title; and

(2) other functions, powers, and duties of the Secretary relating to motor carriers prescribed by the Secretary, except for the authority to promulgate motor vehicle safety standards applicable to the manufacture of trucks and buses, which authority shall remain in the National Highway Traffic Safety Administration.

(d) A duty or power specified in subsection (c)(1) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.

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Calendar No. 509

100TH CONGRESS *1st Congress*	SENATE	REPORT 100-266

MARINE PLASTIC POLLUTION PREVENTION ACT OF 1987

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

H.R. 940

DECEMBER 19 (legislative day, DECEMBER 15), 1987.—Ordered to be printed

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19-010 WASHINGTON : 1987

S263-31

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

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DONALD W. RIEGLE, JR., Michigan
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LLOYD BENTSEN, Texas
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JOHN B. BREAUX, Louisiana
BROCK ADAMS, Washington

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
NANCY LANDON KASSEBAUM, Kansas
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RALPH B. EVERETT, *Chief Counsel and Staff Director*
W. ALLEN MOORE, *Minority Chief of Staff*

Calendar No. 509

100TH CONGRESS
1st Session

SENATE

REPORT
100-266

MARINE PLASTIC POLLUTION PREVENTION ACT OF 1987

DECEMBER 19 (legislative day, DECEMBER 15), 1987.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 940]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 940) to implement the provisions of Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

H.R. 940, as reported, provides domestic implementation for Annex V, Regulations for the Prevention of Pollution by Garbage from Ships, an Optional Annex to the International Convention for the Prevention of Pollution from Ships, 1973 (Convention), as modified by the 1978 Protocol relating to the Convention (MARPOL Protocol). The bill also initiates a public education program and makes additional changes to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.).

BACKGROUND AND NEEDS

Plastic waste is accumulating in the oceans and coastal waters of the world at an alarming rate. A variety of plastic trash, including discarded fishing gear, plastic strapping and wrapping materials, bottles, food bags, and personal hygiene products are found littering beaches and fouling surface waters. The accumulation is particularly noticeable in areas like the Gulf of Mexico where circulation patterns carry floating debris into coastal areas. Plastics repre-

sent a serious pollution problem because they do not degrade readily and may persist in the marine environment for decades.

Millions of birds, fish, whales, seals, and sea turtles die each year from ingesting or becoming entangled in plastic debris. Plastic wastes are estimated to kill thousands of seabirds and marine mammals annually. In addition, plastic debris also threatens human safety. Vessels have been disabled when their propellors were fouled with plastic ropes, sheets, and fishing line. Lastly, the accumulation of trash along coastal areas jeopardizes recreational enjoyment, imposes additional cleanup costs on local communities, and may disrupt the coastal tourist industry.

The plastic debris in the oceans originates from a variety of sources, including merchant and military ships, fishing vessels, coastal recreation, sewage treatment, storm water overflows, and ocean dumping. For a majority of commercial and military vessels, disposal of garbage at sea is the normal operating procedure. A 1975 study by the National Research Council indicated that about 6,400,000 tons of trash are discharged annually into the oceans. An estimated 1 million tons of plastic wastes are thrown from ships into the sea each year.

In 1984, responding to testimony that entanglement in marine debris was contributing to the decline of several marine mammal populations, the Committee recommended initiation of, and authorization of funds for, a research program to assess the problem. The following year, the National Oceanic and Atmospheric Administration (NOAA) began an entanglement program which continues to document the harmful effects of plastic pollution on our ocean and coastal resources. It is the only ongoing Federal program dealing with plastic pollution.

On April 2, 1987, 30 Senators, including 15 members of the Committee, wrote to the President concerning the need for a coordinated Federal strategy to address the problem of plastic accumulation in the marine environment. The administration responded by establishing an interagency task force under the Domestic Policy Council. Chaired by NOAA, the task force is expected to report to Congress in three to 6 months with its recommendations.

ANNEX V OF THE CONVENTION

The MARPOL protocol (including the Convention) is an international agreement negotiated through the International Maritime Organization to reduce pollution of the marine environment from ships. On July 2, 1980, the Senate gave its advice and consent to MARPOL Protocol ratification. The first two annexes, which contain regulations to prevent pollution from oil and noxious liquids, were included in the ratification process at that time; three optional annexes were not considered. Domestic implementation for the MARPOL Protocol was provided in 1980 through the Act to Prevent Pollution from Ships (APPS). The Protocol did not gain the force of international law until October 2, 1983, after it was ratified by several other nations.

Optional Annex V of the Convention, Regulations for the Prevention of Pollution by Garbage from Ships, was submitted to the Senate for advice consent on February 17, 1987. The treaty docu-

ment was reported favorably by the Foreign Relations Committee on October 14 and was approved unanimously by the Senate on November 5. Annex V will enter into force 12 months after it is ratified by more than 15 nations representing not less than 50 percent of the world's shipping tonnage. At present, 28 nations are signatories and deposit of the U.S. instrument of ratification is expected to push the tonnage represented over the requisite 50 percent.

The provisions of Annex V prohibit the discharge (by vessels of signatories) of plastic garbage anywhere in the ocean. They also restrict disposal at area of other types of garbage to specified distances from the nearest land and mandate that ports and terminals have reception facilities capable of holding wastes from ships. Disposal of floatable materials is prohibited within 25 miles and disposal of other garbage such as food wastes, glass, and metal is prohibited within 12 miles of land. Garbage may be ground into small pieces, in which instance, disposal is permitted if the vessel is more than 3 miles offshore. Unlike Annexes I and II which affect only large seagoing ships, Annex V would apply to all vessels, down to the smallest dinghy.

Special areas

Annex V also provides for designation of "special areas", where for technical reasons related to oceanographic conditions and traffic characteristics, the adoption of more stringent regulations are necessary to mitigate garbage pollution. Because severe debris problems are present in coastal areas of Texas and neighboring States, the Gulf of Mexico has been proposed as a special area under the terms of Annex V. The resolution of ratification accompanying Annex V expresses the Senate's understanding that the U.S. Government will pursue the necessary actions to achieve that status. Because of the special hydrological and ecological characteristics of the Gulf of Mexico, and because this area is the focus of intense global shipping, oil and gas development, commercial fishing, and recreational fishing and boating, the Committee believes that such consideration is both appropriate and desirable. The Committee has some concerns, however, over potential effects of implementation of special area designation, particularly on small commercial shrimp fishing vessels that operate in the Gulf of Mexico, and on the various ports and port authorities of the region.

Special area provisions in Annex V prohibit any disposal of food wastes from vessels within 12 miles of land—the area where the preponderance of commercial fishing for shrimp occurs in the Gulf of Mexico. Vessels that operate in this fishery are relatively small and may lack the capacity to store biodegradable food wastes over the duration of voyages that typically last two to four weeks. This situation may pose health and sanitary risks which could be mitigated by various measures such as adoption for special areas of the provision (applied outside special areas) which permits ground food wastes to be disposed of between 3 and 12 miles from shore. The Committee urges that these matters be taken into account in the preparation and implementation of the special area designation proposal.

The Committee has received some expressions of concern that special area designation of the Gulf of Mexico could have an unfair

and negative impact on the competitiveness of Gulf ports and port authorities relative to other domestic ports. Some officials are concerned that special area designation will result in a much larger volume of nearly all types of garbage being landed in Gulf ports relative to other domestic ports, and that the costs of receiving, handling, and disposing of this larger volume of garbage might result in a relatively higher cost of calling on Gulf ports. The Committee urges the U.S. Coast Guard to study this matter and report to the Committee on any steps which might be necessary to prevent Gulf ports and port authorities from being inequitably disadvantaged by special area designation.

Public vessel compliance

Under the terms of the MARPOL Protocol and APPS, public vessels (including those of the U.S. Navy and the Coast Guard) are exempt form requirements to comply fully with the MARPOL Protocol, but they are required to act in a manner that is consistent with the Protocol as far as is reasonable and practicable without imparing their operations or operational capabilities. Public vessels, however, do generate garbage during ship operations and, as on other vessels, disposal at sea is a routine practice. The U.S. Navy estimates that each Navy crew member generates 3 pounds of garbage per day, of which about one-tenth of a pound is plastic. Given the almost 300,000 persons on board Navy ships, the Committee estimates that public vessel operations are a significant source of marine debris which should be addressed.

Unless there is a significant impediment, public vessel complaince with the provisions of Annex V appears to be a practicable goal. In an October 2, 1987 letter, the Navy indicated its expectation that full compliance with Annex V within five years was achievable. The Committee supports and encourages ongoing efforts by the Navy to develop and obtain advice for a systematic plastic reduction strategy.

Legislative History

Senator Stevens introduced the Senate counterpart to H.R. 940 (S. 1562) on July 29, 1987. That bill contains the proposed legislation transmitted by the administration to implement Annex V, and is cosponsored by Senators Breaux and Kerry.

The Committee and the National Ocean Policy Study held a hearing on July 29, 1987, to examine the growing problem of plastic debris in the marine environment. Administration witnesses included representatives from NOAA, the Navy, the Coast Guard, the Department of Agriculture, and the Environmental Protection Agency. Additional testimony was provided by State government officials, environmental groups, and affected industries.

On October 13, the House of Representatives passed H.R. 940, which was subequently referred to the Committee. On November 19, 1987, the Committee, in open executive session, considered an amendment in the nature of a substitute to H.R. 940 and without objection, ordered H.R. 940 as amended reported favorably. The language of the substitute reported by the Committee is a revised text of S. 1562. In addition, the Committee agreed to an amend-

ment offered by Senator Kerry to initiate a public outreach program.

Summary of Major Provisions

As reported, H.R. 940 would:

(1) Provide domestic implementation for Annex V by directing the Secretary of the department in which the Coast Guard is operating (currently the Department of Transportation) to:

(a) develop regulations applicable to all U.S. vessels wherever they are located and to foreign flag vessels when they are in the navigable waters or the exclusive economic zone (EEZ) of the United States; and

(b) establish criteria for determining the adequacy of garbage reception facilities in ports and develop regulations to ensure that adequacy;

(2) Require all Federal agencies to bring ships owned or operated by the government into full compliance with Annex V regulations, and call upon agencies which are unable to comply within 5 years to report to Congress describing impediments to compliance and an alternative schedule; and

(3) Initiate a public outreach program to educate the public concerning the effects of plastic pollution on the marine environment and the need to reduce the disposal of plastic into marine waters.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, December 14, 1987.

Hon. Ernest F., Hollings,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 940, the Marine Plastic Pollution Prevention Act of 1987, as ordered reported by the Senate Committee on Commerce, Science and Transportation, November 19, 1987. We estimate that the enactment of this legislation would increase federal outlays for regulatory programs by a total of $1.5 million over fiscal years 1988–1990.

H.R. 940 would direct the U.S. Coast Guard (USCG) to prescribe regulations implementing Annex V to the International Convention for Prevention of Pollution from Ships, 1973. The legislation would amend the Act to Prevent Pollution from Ships to incorporate the requirements of the Annex for all vessels operating in U.S. waters. Government vessels engaged in non-commercial activities would be allowed five years to achieve compliance. In addition, Section 5 would require persons in charge of ports and terminals to provide or ensure the availability of garbage reception facilities in accordance with regulations to be issued by the USCG. CBO esti-

mates that the Coast Guard would need additional funding of about $1 million to implement Annex V. The additional funds would be spent to promulgate new regulations under Sections 3 and 5.

Section 10 would require the Department of Commerce to conduct a public education program on plastic pollution topics. Because most of the required activities are currently being carried out with existing appropriations, CBO estimates that additional costs of only about $500,000 would be incurred to carry out the provisions of this section.

Some additional costs may also be incurred by the U.S. Navy and other federal agencies that must comply with Annex V, but these costs have not been estimated. While Navy policy assumes eventual compliance with the terms of the Annex, the length of time anticipated to be necessary for implementation has been estimated at 15 years. Accelerating the compliance program will most likely increase costs, but the magnitude of such increases would depend on how much abatement can be accomplished by future changes in procurement and operating procedures. Navy efforts to evaluate compliance costs have not been completed at this time. Other agencies, such as the USCG, are already complying with the Annex, and, for other agencies, the cost to do so is not expected to be significant.

Enactment of this legislation is not expected to have any significant impact on the budgets of state or local governments. After Annex V becomes effective, H.R. 940 would require all port or terminal operators to ensure the availability of garbage reception facilities in accordance with USCG regulations. The potential costs of this provision depend greatly on the nature of the regulations that the USCG would promulgate, particularly as to how many ports would have to expand their existing facilities. In most cases, the costs are not likely to be substantial.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH, *Acting Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER AND TYPE OF PERSONS REGULATED

Regulations to implement the requirements of Annex V will apply to persons operating all types of boats and ships, as well as individuals in charge of ports and terminals. Such regulations should have little effect on most vessel activities, requiring only that vessel operators refrain from indiscriminate disposal of plastic and other garbage at sea. The impact on ports and terminals also is expected to be minimal, because garbage reception facilities are currently provided at most sites.

ECONOMIC IMPACT

The Coast Guard will incur a small cost in establishing and enforcing the regulations required by this legislation. Development of a public education program may also require some additional expenditures. However, the funding needed to carry out these requirements should be modest and is not expected to have an inflationary impact on the Nation's economy. In addition, the reduction of unsightly and entangling debris in marine waters and along our coasts should result in cost savings through reduced expenditures on beach cleanup and more efficient vessel operations. Businesses and individuals required to comply with Annex V regulations may incur minor additional costs if they alter their garbage disposal practices.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Some additional paperwork will be associated with carrying out the requirements of this legislation. Current regulations relating to Annexes I and II require certification of ports and ships, as well as maintenance of vessel logbooks. The Committee anticipates that this existing regulatory framework will be used and adapted as necessary in implementing Annex V standards, thereby minimizing additional paperwork.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section provides the short title, the "Marine Plastic Pollution Prevention Act of 1987".

SECTION 2.—DEFINITIONS

This section, and sections 3 through 8 which follow, would amend APPS to implement Annex V of the Convention. APPS, rather than Title I of the Marine Protection, Research, and Sanctuaries Act, is applicable to the disposal of garbage from ships generated during their normal operations, as well as to other discharges regulated by Annexes I and II of the Convention.

Section 2 would change the definition section of APPS. First, it clarifies the distinction between the terms "MARPOL Protocol" and "Convention" as used in APPS. The definition of "MARPOL Protocol" would be amended to include the Convention. The definition of "Convention" would be modified to cover Annex V and any modifications or amendments made to the Convention, its Protocols, or its Annexes which have entered into force for the United States. Finally, this section would add "garbage" to the terms whose meanings under the Convention are incorporated into APPS by reference. It is the intention of the Committee that the Secretary utilize a definition of the term "plastic" which is consistent

with International Maritime Organization guidelines relating to the MARPOL Protocol.

SECTION 3.—APPLICABILITY AND REGULATORY AUTHORITY

This section would amend section 3 of APPS, which sets out the ships, both U.S. and foreign, to which the statute applies. This section does not exclude the application of this Act to ports and terminals. Subsection (a) of this section would rewrite section 3(a) of APPS. As with existing law, the new section 3(a) would apply APPS's implementation of the MARPOL Protocol to U.S. ships wherever they are located, and to all other (i.e., foreign) ships while they are located in the navigable waters of the United States. It further provides that the requirements of Annex V would apply to foreign ships while they are in the navigable waters or the EEZ of the United States. The Committee intends that Annex V standards be applied to all vessels in the navigable, including inland, waters of the United States.

Currently, neither APPS nor the Convention applies to government vessels engaged in noncommercial service. However, Federal agencies (principally the Navy and Coast Guard) which operate ships are required to set standards consistent with the MARPOL Protocol as is operationally feasible. Subsection (b) of this section would modify this exemption, requiring public vessels to comply with Annex V within 5 years. An exception occurs for war and national emergencies, at which times, public vessels would need only comply as may be consistent with their operational mission. Should 5 years appear to be too short a period, the responsible Federal agency would report to Congress under section 9 of the bill a substitute compliance schedule within 3 years of the entry into force of Annex V. Congress would then modify the 5 year requirement, in accordance with section 9(b) of the bill.

This section also would add a new section 3(c)(2) to APPS, directing the Secretary of the department in which the Coast Guard is operating (Secretary) to prescribe regulations which implement Annex V standards for ships. Such regulations would be promulgated to apply to U.S. vessels, MARPOL-party vessels, and non-MARPOL-party vessels. APPS currently mandates that regulations applicable to ships of non-parties to the MARPOL Protocol be not more favorable than the treatment accorded to ships of parties. The Committee anticipates that the regulations which are promulgated under this section will be consistent with that mandate.

Where appropriate, the Committee expects that regulations applicable to U.S. vessels will require maintenance of refuse logbooks, development of shipboard waste management plans, and display of placards outlining Annex V requirements. The Committee expects the Secretary to seek an international agreement or agreements which would apply equivalent requirements to all vessels subject to Annex V of the Convention.

SECTION 4.—ADMINISTRATION AND ENFORCEMENT

This section would make a technical amendment to subsection 4(a) of APPS, which would continue to apply the scope of the administration and enforcement of Annexes I and II only to seagoing

ships. To conform to APPS definitional changes made in section 2 of this bill, the term "Convention" would be substituted for "MARPOL Protocol" in the last sentence of the subsection.

SECTION 5.—RECEPTION FACILITIES

This section would amend section 6 of APPS, which currently requires regulations to set adequacy standards for facilities at ports and terminals receiving residues and mixtures of oil or noxious liquid substances. First, this section would add a new provision to section 6(a) of APPS, requiring that regulations be established for garbage reception facilities at ports and terminals. Under this change, persons in charge of ports or terminals would be responsible for ensuring that adequate facilities for reception of garbage be provided.

The Committee anticipates development of a tiered system of criteria for determining the adequacy of facilities. The Animal and Plant Health Inspection Service of the Department of Agriculture requires facilities to sterilize or incinerate foreign garbage, in order to prevent the spread of disease and pests. Such facilities will be needed in large ports with international traffic. By contrast, a 50-gallon garbage can might provide adequate reception at a small, local marina. It is the intention of the Committee that the Secretary consult with the Secretary of Agriculture in developing criteria to ensure that available facilities are matched to the needs of vessels utilizing them. The Committee further anticipates that the Secretary will issue reception facility certificates in cases where such issuance constitutes an effective regulatory mechanism.

Finally, this section would modify section 6(e) of APPS to authorize the Secretary to deny entry of a ship to a port or terminal which does not have such garbage reception facilities in compliance with regulations established under this section.

SECTION 6.—INSPECTIONS CONCERNING POSSIBLE VIOLATIONS

This section would restructure the authority to conduct ship inspections which is provided in section 8(c) of APPS. Insofar as it relates to possible violations of Annexes I or II by non-U.S. ships, the current authority under that subsection would continue. The Committee intends to provide the Coast Guard with authority to inspect ships for possible violations of Annex V while they are located in ports, in the navigable waters of the United States, or in the U.S. EEZ.

New subsection (d) of section 8 of APPS would authorize inspections of non-U.S. ships for suspected illegal disposal of garbage. The MARPOL Protocol, on its own, does not provide the means by which sanctions may be imposed for the violation of Annex V by non-party ships. Amendments to APPS included in the bill would provide the means by which those prohibitions could be applied to all ships in the navigable waters or EEZ of the United States. If violations of the Annex V-based regulations, prescribed under new section 3(c)(2) of APPS, were detected during an inspection of a non-party ship under new section 8(d) of APPS, sanctions could be imposed under section 9 of APPS, consistent with customary international law.

New subsection (e) of APPS would authorize inspection of U.S. ships for possible violations of the MARPOL Protocol (including the Convention and Annexes I, II, and V), APPS, or related regulations. If such violations were detected, the Secretary could assess penalties under section 9 of APPS.

SECTION 7.—REFERRALS FOR APPROPRIATE ACTION BY FOREIGN COUNTRY

This section would amend section 9(f) of APPS, which authorizes the Secretary, in lieu of taking criminal or civil action against a ship of a party to the MARPOL Protocol, to refer the entire matter to the party country for appropriate action. This amendment would modify existing language in that section in order to clarify the point that this treatment is accorded only to ships of MARPOL party nations. Should a party to MARPOL Protocol fail to impose meaningful sanctions following referrals of substantial evidence, the Secretary would retain the authority to impose the sanctions provided under APPS if the violations occurred in the territorial sea or EEZ of the United States.

This section then would add a new paragraph (2) of section 9(f), stating that any action taken against a ship for violation of section 3(c)(2) regulations must be in accordance with international law. Among other things this means that no imprisonment will be imposed for MARPOL violations in the U.S. EEZ. In addition, subject to the exceptions set forth in Article 228 of the 1982 Law of the Sea Convention, proceedings against such a ship will be suspended if the flag nation institutes proceedings in the prescribed time. The Committee also recognizes that the Coast Guard has the authority to and will notify a non-party to Annex V of any enforcement action taken against its ship in the U.S. EEZ.

SECTION 8.—AMENDMENT PROCEDURES

This section would amend section 10 of APPS, which provides for acceptance of amendments to the MARPOL Protocol. These would be technical changes, updating the name of the International Maritime Organization and adding a reference to Annex V.

SECTION 9.—COMPLIANCE REPORTS

This section would require Federal agencies operating public vessels to report to Congress if those vessels are unable to comply with this Act within 5 years. The report of each agency would be submitted within 3 years of the date of enactment. It would include impediments to full compliance, an alternative schedule for compliance, and a description of the ships for which compliance is not technologically feasible. After reviewing each report, Congress would consider appropriate modifications to the 5-year deadline for public vessel compliance.

SECTION 10.—PUBLIC EDUCATION PROGRAM

This section would require NOAA in consultation with the Coast Guard and other interested Federal agencies to conduct an outreach program to educate the public on the impact of plastic pollution in the marine environment. At the July 29 hearing, education

was identified by several witnesses as a critical element in reducing disposal of plastic trash and garbage into marine waters. Consequently, the Committee expects that necessary funds will be appropriated to carry out this section. At the same time, the Committee recognizes the importance of ongoing NOAA programs in this area, such as the entanglement program, and anticipates that funds appropriated to carry out this section will be in addition to those required to support ongoing programs.

SECTION 11.—EFFECTIVE DATES

This section would establish the date Annex V enters into force in the United States as the effective date for the legislation. This section would authorize regulations to be issued and adopted on the date of enactment, but these regulations would not go into effect before the bill would. Section 10 is exempted from this section and the Committee expects planning for a public outreach program to be initiated on the date of enactment.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

ACT TO PREVENT POLLUTION FROM SHIPS

SECTION 2 OF THAT ACT

SEC. 2. Unless the context indicates otherwise, as used in this Act—

[(1) "MARPOL Protocol" means the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London on February 17, 1978. This Protocol incorporates and modifies the International Convention for the Prevention of Pollution from Ships, 1973, done at London on November 2, 1973;]

(1) "MARPOL Protocol" means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the "Convention";

(2) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and *Annexes I, II, and V thereto, including any modifications or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States;* [Annexes I and II attached thereto;]

(3) "discharge" *and "garbage"* and "harmful substance" and "incident" shall have the meanings provided in the Convention;

(4) through (9) * * *

SECTION 3 OF THAT ACT

SEC. 3. [(a) This Act applies to—

[(1) a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

[(2) a ship registered in or of the nationality of a country party to the MARPOL Protocol, or one operated under the authority of a country party to the MARPOL Protocol, while in the navigable waters of the United States; and

[(3) a ship registered in or of the nationality of a country not a party to the MARPOL Protocol, under subsection (c) of this section, while in the navigable waters of the United States.]

(a) This Act applies—

(1) to a ship of United States registry, of the United States nationality, or operated under the authority of the United States, wherever located;

(2) to a ship other than a ship referred to in paragraph (1) of this subsection, while in the navigable waters of the United States; and

(3) in matters involving Annex V of the Convention, to a ship other than a ship referred to in paragraph (1) of this subsection, while in the navigable waters of the United States or the exclusive economic zone of the United States.

[(b) This Act does not apply to—

[(1) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

[(2) any other ship specifically excluded by the MARPOL Protocol.]

(b)(1) Except as provided in paragraph (2) of this subsection, this Act shall not apply to—

(A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(B) any other ship specifically excluded by the MARPOL Protocol.

(2)(A) Notwithstanding any provision of the MARPOL Protocol, and subject to subparagraph (B) of this subsection, the requirements of Annex V to the Convention shall apply after 5 years after the effective date of this paragraph to a ship referred to in paragraph (1)(A) of this subsection.

(B) This paragraph shall not apply during time of war or a declared national emergency.

(c)(1) The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol to ensure that their treatment is not more favorable than that accorded ships of parties to the MARPOL Protocol.

(2) The Secretary shall prescribe regulations implementing Annex V of the Convention.

SECTION 4 OF THAT ACT

SEC. 4. [(a) Unless otherwise specified herein, the Secretary shall administer and enforce the MARPOL Protocol and this Act. In the administration and enforcement of the MARPOL Protocol and this

Act, Annexes I and II of the MARPOL Protocol shall be applicable only to seagoing ships.]

(a) Unless otherwise specified in this Act, the Secretary shall administer and enforce the MARPOL Protocol and this Act. In the administration and enforcement of the MARPOL Protocol and this Act, Annexes I and II of the Convention apply only to seagoing ships.

(b) through (c) * * *

SECTION 6 OF THAT ACT

SEC. 6. (a)*(1)* The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall establish regulations setting criteria for determining the adequacy of [reception facilities of a port or terminal] *a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances* and shall establish procedures whereby a person in charge of a port or terminal may request the Secretary to certify that the port's or terminal's facilities for receiving the residues and mixtures containing oil or noxious liquid substance from seagoing ships are adequate.

(2) The Secretary, after consulting with appropriate Federal agencies, shall establish regulations setting criteria for determining the adequacy of reception facilities for garbage at a port or terminal, and stating such additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that such facilities are available, for receiving garbage in accordance with those regulations.

(b) In determining the adequacy of reception facilities required by the MARPOL Protocol at a port or [terminal,] *terminal, and in establishing regulations under subsection (a) of this section,* the Secretary may consider, among other things, the number and types of [seagoing ships] *ships or seagoing ships* using the port or terminal, including their principal trades.

If, upon inspection, reception facilities of a port or terminal are adequate to meet the requirements of [the MARPOL Protocol] *Annexes I and II of the Convention* and the regulations established hereunder, the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant. A certificate issued under this subsection–

(1) is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and

(2) shall be available for inspection upon the request of the master, other person in charge, or agent of a seagoing ship using or intending to use the port or terminal.

The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by him in the manner prescribed by regulation.

(b) * * *

(e)*(1)* Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention to retain

onboard while at sea, residues and mixtures containing oil or noxious liquid substance, if—

[(1)] *(A)* the port or terminal is one required by [the MARPOL Protocol] *Annexes I and II of the Convention* or regulations hereunder to have adequate reception facilities; and

[(2)] *(B)* the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(2) The Secretary may deny the entry of a ship to a port or terminal required by regulations issued under this section to provide adequate reception facilities for garbage if the port or terminal is not in compliance with those regulations.

(f) * * *

SECTION 8 OF THAT ACT

SEC. 8. (a) * * *

(b) * * *

(c)*(1) This subsection applies to inspections concerning possible violations of Annex I or Annex II of the Convention by any seagoing ship referred to in section 3(a)(2) of this Act.*

(2) While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol applies may be inspected by the Secretary—

[(1)] *(A)* to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL Protocol or this Act; or

[(2)] *(B)* to comply with a request from a party to the MARPOL Protocol for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol. An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. [If a report made under this subsection involves a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the] *The* Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d)(1) This subsection applies to inspections concerning possible violations by any ship referred to in section 3(a)(3) of this Act.

(2) To the extent authorized by international law, a ship may be inspected by the Secretary to verify whether or not such ship has disposed of garbage in violation of Annex V of the Convention, this Act, or the regulations issued thereunder.

(3) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake, in accordance with international law, enforcement action under section 9 of this Act.

(e)(1) This subsection applies to inspections concerning possible violations of the MARPOL Protocol or this Act by any ship of

United States registry or nationality, or operating under the authority of the United States.

(2) The Secretary may inspect at any time a ship to which the MARPOL Protocol or this Act applies to verify whether or not the ship has discharged a harmful substance or has disposed of garbage in violation of that Protocol, this Act, or the regulations issued thereunder.

(3) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 9 of this Act.

[(d)] *(f)* Remedies and requirements of this Act supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this Act. Nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this Act.

SECTION 9 OF THAT ACT

SEC. 9. (a) * * *

(b) through (e) * * *

(f)*(1)* Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol, or one operated under the authority of a country party to the MARPOL Protocol, the Secretary, acting in coordination with the Secretary of State, may refer the matter [to that country] *to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating,* for appropriate action, rather than taking the actions required or authorized by this section.

(2) Any action taken under this section with respect to violations of the MARPOL Protocol or regulations issued under section 3(c)(2) of this Act shall be in accordance with international law.

SECTION 10 OF THAT ACT

SEC. 10. (a) A proposed amendment to the MARPOL Protocol received by the United States from the Secretary-General of the [Inter-Governmental Maritime Consultative Organization] *International Maritime Organization* pursuant to Article VI of the MARPOL Protocol, may be accepted on behalf of the United States by the President following the advice and consent of the Senate, except as provided for in subsection (b) of this section.

(b) Action on certain amendments by the Secretary of State. A proposed amendment to [Annex I or II, appendices to the Annexes, or Protocol I of the MARPOL Protocol,] *Annexes I, II, or V, appendices to those Annexes, or Protocol I of the Convention,* received by the United States from the Secretary-General of the

[Inter-Governmental Maritime Consultative Organization] *International Maritime Organization* pursuant to Article VI of the MARPOL Protocol, may be the subject of appropriate action on behalf of the United States by the Secretary of State following consultation with the Secretary, who shall inform the Secretary of State as to what action he considers appropriate at least 30 days prior to the expiration of the period specified in Article VI of the MARPOL Protocol during which objection may be made to any amendment received.

(c) * * *

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